

PATENT

ATTY DOCKET: KCX-699 (19266)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: MARY L. McDANIEL ET AL.

Examiner: Michael Collins

Serial No.: 10/732,925

Group Art Unit: 7367

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Customer No.: 22827

Title: DISPENSER FOR PERSONAL CARE ABSORBENT ARTICLES

APPLICANTS' REPLY APPEAL BRIEF

MAIL STOP APPEAL BRIEF – PATENTS

Commissioner of Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

In accordance with 37 CFR § 41.41, Applicants hereby submit the reply appeal brief to the Examiner's Answer mailed on August 22, 2007, for the caption application.

In responding to the arguments in applicants' brief addressing the section 112, second paragraph rejection, the Examiner's Answer contends beginning at line 18 on page 11 through line 3 on page 12 (emphasis in original):

Therefore, whether a device falls within the scope of the claims cannot be ascertained until a particular user engages the device. Consequently, the claims are indefinite and the scope of enablement is not established because a person of ordinary skill is not enabled to make this ergonomic device unless a particular user with particular dimensions, not disclosed in the specification, engages the device in order to fit the product to the person. If the device being claimed is enabled to be ergonomic to one particular user, then it could **not** be enabled to be ergonomic to another user when using the product decreases another user's efficiency.

This argument of the Examiner's Answer is an attempt to reduce applicants' arguments to an absurdity. Women's hand gloves are sold in sizes denominated small, medium and large and have been for at least a century. In fact, some manufacturers of women's gloves get by with just two sizes, which are denominated small/medium and medium/large.

By the Examiner's Answer statement that (emphasis in original):

If the device being claimed is enabled to be ergonomic to one particular user, then it could **not** be enabled to be ergonomic to another user when using the product decreases another user's efficiency

the Examiner's Answer is apparently contending that the person of ordinary skill would believe that a device that is ergonomic for one particular user could not be ergonomic for another particular user. However, reality is strongly to the contrary. In fact, a device that is ergonomic for one particular user is likely ergonomic for hundreds of millions of additional particular users. Were it not so, then everything from women's gloves to

electric power tools would need to be made in an infinite number of sizes and shapes. However, that is not the case, and it is not the case with applicants' claimed invention either. Thus, the Examiner's Answer attempts an elevation of form over substance and appears to posit a virtual reality that is not within the purview of the person of ordinary skill in the field to which applicants' invention pertains.

Essentially, the Examiner's Answer is arguing that applicants' claims are not in compliance with Section 112, first paragraph and second paragraph because applicants' do not provide more detailed structural elements. However, the need for more detailed structural elements is not presented by the prior art being cited against applicants' claims. Applicants need not further limit their claims in the absence of prior art that requires further limitation. The argument of the Examiner's Answer appears to be that were applicants required to introduce further structural limitations into the claims, then applicants' claims could not support such further limitations based on applicants' specification. However, this issue is not before the Board.

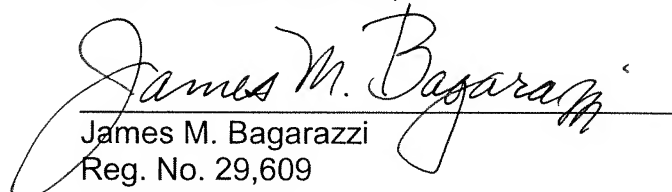
The issue is whether the prior art being cited against applicants' claims is close enough to the claimed subject matter to warrant further definition in order to distinguish this prior art. Applicants contend that these circumstances are not presented in the case on appeal. And so the Examiner's Answer is essentially presenting a theoretical

situation that is not supported by the prior art being cited against applicants' claims.

Respectfully submitted,

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